

A Guide to Special Education Administrative Complaints in Tennessee

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A Guide to Special Education Administrative Complaints in Tennessee

The Individuals with Disabilities Education Act (IDEA) and Tennessee State Board of Education Rules and Regulations provide three (3) dispute resolution options to help resolve issues related to special education: administrative complaint, mediation, and due process hearing. Information concerning these three (3) dispute resolution options is contained in the booklet entitled “Rights of Children with Disabilities and Parent Responsibilities” which is available online at: <http://www.state.tn.us/education/speced/spedrights.pdf>.

The purpose of this document is to provide guidance on the state compliance procedures that are provided at 34 C.F.R. §§ 300.660 – 300.662 of the final Part B regulations, published in the Federal Register on March 12, 1999. The entire process is explained and many frequently asked questions are answered. Appendices at the end of this document contain additional information.

If you have questions about anything in this document or anything concerning your child’s education, you are encouraged to contact the Tennessee Department of Education/Division of Special Education at (615) 741-2851 or toll free at 1-888-212-3162.

Before Filing An Administrative Complaint

The following items are recommended as a “checklist” of steps to follow before filing an administrative complaint:

- ✓ Contact the teacher or service provider and discuss the concerns
- ✓ Notify the principal and request his/her assistance
- ✓ Request an IEP team meeting
- ✓ Contact a special education director/supervisor of the school district and make them aware of the concerns and update them on the results of any contact with the teacher, principal, etc.

If a local resolution to the concerns is not achieved, you may proceed in filing an administrative complaint.

Filing An Administrative Complaint

An administrative complaint should be filed in writing and signed by the individual making the complaint. The department of education has an administrative complaint form that will be provided upon request. The form is also available on the department of education/division of special education web site at <http://www.state.tn.us/education/speced/selegalservices.htm>.

An individual filing a complaint (or **complainant**) may wish to use the back of the form for additional information, or attach additional pages that express their concerns. Sometimes, a personal letter will serve as an administrative complaint, but this may make identifying valid complaint issues more difficult. Copies of any documents that support the allegation of a violation should be sent.

After Filing An Administrative Complaint

- ✱ The complainant will be sent a letter acknowledging that the Tennessee Department of Education/Division of Special Education has received the administrative complaint. This letter invites the complainant to send any additional information or documentation to the Tennessee Department of Education/Division of Special Education, if the additional information relates to the complaint or the investigation.
- ✱ A letter with a copy of the complaint will be sent to the director of schools and the special education director/supervisor of the school district, the department of education special education resource service coordinator that serves the school district, the department of education management and monitoring personnel that serve the school district, and a copy will be maintained in the compliance consultant's files.
- ✱ Both of these letters will state that, by law, administrative complaints have a timeline of sixty (60) calendar days from receipt of the complaint to the issuance of a closure letter.
- ✱ The letter to the school district will explain to the school district what must be provided to the Tennessee Department of Education/Division of Special Education in response to the complaint.

Within Ten (10) Days

Within ten (10) calendar days after the school district receives a copy of the complaint, they may contact the complainant to attempt to initiate an "early resolution". If the school district and the complainant can arrive at a mutually agreeable solution or resolution to the issue(s), department of education intervention will be averted.

This would result in a swift resolution to the complaint and possibly forge a stronger working relationship between the complainant and the school district through their cooperative efforts at addressing the issue(s). In this event, the school district's written response to the complaint would indicate to the compliance consultant that an early resolution was achieved.

If Early Resolution Is Not Achieved

If the school district does not contact the complainant, or if they make contact and an early resolution is not achieved, the compliance consultant will begin an investigation into the complaint. The investigation may include:

- ✱ Requests for additional written information from the complainant or the school district;
- ✱ Telephone conversations with the complainant or the school district;
- ✱ A “site visit” to the school, if deemed appropriate; and/or
- ✱ Gathering of evidence or documentation in whatever manner is deemed appropriate.

While The Complaint Is In Progress

After the 30th day, a letter will be sent to the school district reiterating there is a sixty (60) calendar day timeline. This letter does not go to the individual making the complaint, only to the school district. This timeline listed in the federal and state regulations does not give the school district sixty (60) calendar days to respond to the complaint; rather it is giving the Tennessee Department of Education/Division of Special Education sixty (60) calendar days to complete an investigation and issue the closure letter.

This “warning letter” reminds the school district of their responsibility to respond in a timely manner and states that their failure to do so may result in penalties and/or sanctions against the school district.

The Closure Letter

The compliance consultant reviews all materials, evidence, and documentation necessary to allow the determination of whether there has been a violation of a federal or state regulation, and what corrective action, if any, is needed.

The compliance consultant refers to applicable state and federal statutes and their attendant regulations as he/she reviews the Administrative Complaint issues and the school district’s response to the complaint.

The assistant commissioner of special education sends a closure letter to the complainant, the director of schools, the school district’s director/supervisor of special education, the state special education resource service coordinator and management and monitoring personnel, and a copy is maintained in the compliance consultant’s files.

The closure letter will include the following:

- ❖ A restatement of the issues contained in the administrative complaint,
- ❖ A list of investigative procedures employed and timelines followed,
- ❖ A findings of facts related to each issue, and
- ❖ Conclusion(s) and reason(s) for the final decision.

After The Closure Letter

The conclusion of the closure letter contains a paragraph that states: "If you believe that these findings are not accurate and you have evidence to substantiate this, please submit the additional evidence to this office in writing. This will be reviewed and revisions will be made to our findings, if necessary. If a response is not received within 15 days of the receipt of this letter, we will close our investigation and consider the complaint resolved."

This applies to both the complainant and the school district. If either party disagrees with the closure letter and if they have evidence to substantiate their position, they should send it to the compliance consultant. After a review and, if appropriate, an additional investigation, a letter shall be issued notifying all parties of any change in the decision regarding the complaint, or that no change to the original closure letter was indicated.

A copy of this letter shall be issued to the complainant, the director of schools, the school district's director/supervisor of special education, the state special education resource service coordinator and management and monitoring personnel, and a copy is maintained in the compliance consultant's files.

If The School District Is Required To Take Corrective Action

If the department of education requires the school district to take action to correct a violation, the school district shall document completion of the action to the department of education.

Upon receipt of the school district's documentation of compliance with the closure letter's directive, a letter shall be issued and sent to the complainant, the director of schools, the school district's director/supervisor of special education, the state resource service coordinator and management and monitoring personnel, and a copy is maintained in the compliance consultant's files. The documentation of the school district's compliance shall be maintained in the compliance consultant's files.

Frequently Asked Questions

Can an administrative complaint be faxed to a compliance consultant?

Yes. Even letters or e-mail complaints are treated as administrative complaints, if they contain all the required elements and information, and specify that they are a complaint.

Are administrative complaints ever resolved earlier than the sixty (60) calendar day timeline?

Yes. If the investigation is concluded and the school district has responded to the complaint, it is possible that the closure letter may be issued sooner than the sixty (60) calendar day deadline.

You received a letter that states the department has determined that an investigation will not be conducted because the complaint alleges no violation of special education laws. What does that mean?

Issues that do not relate to federal or state regulations for special education are said to be “non-IDEA” issues. These are issues that are outside the scope of an administrative complaint. Examples would be: general education issues, teacher assignment, promotion/retention, personnel, etc.

When an administrative complaint composed entirely of issues not related to special education is submitted, the complainant would receive a letter explaining that their concerns could not be addressed through the administrative complaint process.

Some complaints contain special education-related issues plus some issues not related to special education. In those instances, the special education issues would be properly investigated and the closure letter would explain which issues were not special education issues and, therefore, not investigated.

Can someone who is not the parent of the child file an administrative complaint?

Yes. A parent, other concerned individual, or an organization may file an administrative complaint. However, an individual or organization, other than the parent, making a complaint would need to provide a signed release of information form from the parent of the child before any information related to the child could be released to them.

Sometimes, advocates assist parents in writing/filing an administrative complaint. The advocate would need to have a signed release of information from the parent, as well.

What can a party do if they disagree with the outcome of an administrative complaint?

Either the complainant or the school district can send in more evidence. The compliance consultant will evaluate this new evidence, and the original decision may be revised or may remain unchanged.

If either party has sent new evidence and the result is the same, or if they do not have new evidence, they still have the right to request mediation or a due process hearing on the same issue(s).

You went to mediation first and did not reach an agreement; can you file an administrative complaint on the same issue?

Yes. But remember, an administrative complaint issue must allege a violation of an applicable rule or regulation.

You reached agreement at mediation, but one of the parties is not following the agreement. Can you file an administrative complaint because they are not following the agreement?

Possibly. It would depend on whether the action, or inaction, that resulted in the failure to follow the mediation agreement constituted a violation of a federal or state rule or regulation. Either party could request a due process hearing and the administrative law judge could enforce the mediation agreement.

Can you file an administrative complaint on an issue that has been part of a due process hearing that the Administrative Law Judge ruled on?

No. Once an issue has been ruled on by an administrative law judge, that issue cannot be taken to mediation or filed as an administrative complaint.

Can you file multiple administrative complaints in close proximity to each other?

Yes. However, they may be appended to the original complaint making one (1) complaint with multiple issues. This could benefit the complainant in that the issue that was submitted after the original complaint would be resolved according to the sixty (60) calendar day timeline applied to the original complaint. This results in a speedier and more comprehensive solution than would be achieved by processing the complaints separately.

If after filing a complaint a parent/guardian sends additional information regarding the same issue or additional issues, the department may determine on a case-by-case basis whether or not to amend the original complaint or to process the new information as a separate complaint.

Can you file an administrative complaint in the summer?

Yes. It is best to file an administrative complaint as soon as there is a concern. If a concern arises at the end of the school year or during ESY (extended school year), or if a concern from earlier in the school year does not improve by the end of school, it would be appropriate to file an administrative complaint in the summer. School district administrators work eleven (11) or twelve (12) months and respond to complaints year round.

Contact a compliance consultant when a concern first appears by calling: (615) 741-2851 or 1-888-212-3162. Many times, answers to questions or advice as to how to address concerns will help keep a concern from becoming an administrative complaint issue.

What is the role of the Tennessee Department of Education/Division of Special Education when they attend IEP meetings?

If either the parent or the school district requests Tennessee Department of Education/Division of Special Education personnel to attend an IEP meeting, every effort is made to send someone. Adequate advance notice is needed. Requests may be made by calling (615) 741-2851 or 1-888-212-3162.

Tennessee Department of Education/Division of Special Education personnel act as a resource at IEP meetings. They are available to answer questions related to the law and regulations and to ensure that all applicable regulations/procedures are followed during the meeting. By working to ensure that the rights of the parent and child are respected, and the law and regulations are enforced, the division is attempting to be fair and impartial to all parties.

Issues That May Not Be Addressed By An Administrative Complaint

An IEP team makes many decisions that affect a student's educational program, specifically, the provision of special education and related services. There are, however, many decisions that an IEP team does not have the responsibility or ability to decide. These are administrative decisions and are made by the school district.

Examples of "administrative decisions" include:

- ◆ Promotion or Retention
- ◆ Grade Assignment
- ◆ School Assignment
- ◆ Teacher Assignment
- ◆ Assignment of Service Providers

Other issues that may not be addressed by an administrative complaint are:

- Allegations of abuse should be reported to the director of schools and local law enforcement agency or the department of children services.
- Allegations of discrimination or violations of civil rights should be reported to your local Title VI, Title IX, Section 504 coordinator(s), or the Office for Civil Rights at (404) 562-6350, unless it was related to the student's disability and special education services.
- Additionally, matters that are exclusively under the control of the local school district may not be addressed by an administrative complaint. (For example: personnel issues and general education issues are the responsibility of the local school district). A concerned party should check with the local school district and request a copy of the local school board policy regarding filing a complaint or grievance against a school board employee. If an individual having a local complaint follows the local school board written policy, they may effectively complain locally about any school district employee.

What An Administrative Complaint Can Do

An administrative complaint is a way to ensure that the federal and state regulations are followed, that the rights of the parent and the child are being observed and that the child is receiving all the special education and services that are a part of the IEP.

An administrative complaint remedy may require the school district to document completion of certain actions or activities in order to be in compliance with the regulations. Compensatory services may be awarded if services specified in an IEP are not provided to a child. Reimbursement to the parent for services they provided, that were found to be the system's responsibility, may be appropriate as well. Other remedies may be required. An appropriate remedy to an administrative complaint depends on the facts pertaining to the complaint.

What An Administrative Complaint Can Not Do

An administrative complaint cannot:

- ✗ Terminate the employment of a principal, teacher, bus driver, or other school district employee
- ✗ Determine a specific teacher or service provider for a student
- ✗ Change grades (unless modified grading is a modification in the IEP)

The purpose of an administrative complaint is not to punish the school district. Parents do not receive punitive damages, nor are school districts fined for violations.

Appendix A – Federal IDEA Regulations

State Complaint Procedures

§300.660 Adoption of State complaint procedures

(a) **General.** Each SEA shall adopt written procedures for –

- (1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of §300.662 by-
 - (i). Providing for the filing of a complaint with the SEA; and
 - (ii). At the SEA's discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint; and
- (2) Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State's procedures under §§300.660-300.662.

(b) **Remedies for denial of appropriate services.** In resolving a complaint in which it has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address:

- (1) How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child; and
- (2) Appropriate future provision of services for all children with disabilities.

(Authority: 20 U.S.C. 1221e-3)

§300.661 Minimum State complaint procedures.

(a) **Time limit; minimum procedures.** Each SEA shall include in its complaint procedures a time limit of 60 days after a complaint is filed under §300.660(a) to –

- (1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;
- (2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
- (3) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and
- (4) Issue a written decision to the complainant that addresses each allegation in the complaint and contains –
 - (i). Findings of fact and conclusions; and
 - (ii). The reasons for the SEA's final decision.

(b) **Time extension; final decision; implementation.** The SEA's procedures described in paragraph (a) of this section also must-

- (1) Permit an extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint; and
- (2) Include procedures for effective implementation of the SEA's final decision, if needed, including-
 - (i). Technical assistance activities;
 - (ii). Negotiations; and
 - (iii). Corrective actions to achieve compliance.

(c) **Complaints filed under this section, and due process hearings under §§300.507 and 300.520-300.528.**

- (1) If a written complaint is received that is also the subject of a due process hearing under §300.507 or §§300.520-300.528, or contains multiple issues, of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.
- (2) If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties-
 - (i). The hearing decision is binding; and
 - (ii). The SEA must inform the complainant to that effect.
- (3) A complaint alleging a public agency's failure to implement a due process decision must be resolved by the SEA.

(Authority: 20 U.S.C. 1221e-3)

§300.662 Filing a complaint.

(a) An organization or individual may file a signed written complaint under the procedures described in §§300.660-300.661.

(b) The complaint must include-

- (1) A statement that a public agency has violated a requirement of Part B of the Act or of this part; and
- (2) The facts on which the statement is based.

(c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §300.660(a) unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received under §300.660(a).

Appendix B – Tennessee State Board of Education Rules and Regulations

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(8) Complaint procedures.

(a) An Administrative Complaint to the Division regarding an LEA program:

1. Must be in writing;
2. Should be addressed to the Division;
3. Must be signed by the person making the complaint (anonymous complaints will not be processed);
4. Should be clear and concise in identifying the concern or the alleged violations; and
5. Need not identify the specific law or regulation involved.

(b) The primary responsibility for the investigation and resolution of complaints is with the Division. A staff member will be assigned to conduct an impartial review of the facts and to recommend an objective resolution of the complaint based on the Division's procedures.

(c) Any complaint must be investigated and resolved within sixty (60) calendar days from receipt of the written complaint. The sixty (60) day timeline may be extended by the Department or the Division for exceptional circumstances such as:

1. The complexity of the issues;
2. The need for additional information;
3. The unavailability of any necessary party;
4. The request and agreement of both parties for reasons such as illness, administrative need, or early complaint resolution; or
5. Additional complaint issues submitted by the same person making the complaint if the issues are different.

(d) The complainant and the district administrator will be notified in writing of an extension in the timeline and the reasons for it.

(e) The complainant must allege a violation of a requirement of a state or federal law or regulation governing educational services to children eligible for special education, provide specific information to support the allegation(s), and must sign the complaint.

(f) Individuals or organizations filing verbal complaints are sent a complaint form for completion and signature.

(g) If the Division determines that no violation was committed, a letter to the complainant with a copy to the local school district will be sent explaining that the concerns are not sufficient to merit an investigation.

- (h) If the Division determines a violation of a requirement of state or federal law are met, the Division must immediately contact the local school system to seek an early resolution of the issues unless the person making the complaint has filed for a due process hearing on the same issue(s). The investigation will then be tolled until a decision in the due process hearing has been made.
- (i) To initiate an early resolution, the local school system, within ten (10) calendar days of receipt of the written complaint, should provide a record of contact with the parent, a statement of the proposed resolution and whether the parent has agreed to the resolution.
- (j) If the local school system states that the complaint has been resolved, the Division may contact the parents to verify the resolution and write a letter of findings to both parties.
- (k) If the complaint is not resolved within ten (10) calendar days or the complainant does not agree that resolution has occurred, the complaint must be investigated.
- (l) To investigate the complaint the Division may use any of the following procedures to resolve the complaint:
 - 1. Request copies of existing documents;
 - 2. Request written answers to written questions;
 - 3. Telephone or personal interviews with officials, employees, students, parents or other relevant persons.
 - 4. Request a corrective action plan; and
 - 5. Other procedures as deemed appropriate.
- (m) The Division must provide an opportunity to the complainant to:
 - 1. Submit any additional information regarding the allegations;
 - 2. Provide written or oral comments on the information provided by the local school system and the parent.
- (n) After completion of the investigation, a decision will be rendered and written to address each allegation in the complaint. This document will contain the facts of the investigation and the reasons for the final decision. Both parties will receive copies of this issuance of findings.
- (o) Remedies for denial of appropriate services.
 - 1. In resolving a complaint in which it has found a failure to provide appropriate services, the Department shall address:
 - (i). How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child; and
 - (ii). Appropriate future provision of services for all children with disabilities.

Appendix C - Online Resources

The Tennessee State Board of Education rules and regulations may be accessed at the Internet address below:

State Board of Education Rules, Regulations, and Minimum Standards for the Operation of the Public School System

<http://www.state.tn.us/sos/rules/0520/0520-01/0520-01.htm>

The Federal IDEA regulations, and many related resources, may be found at the Internet address below:

IDEA

<http://www.ideapractices.org/law/index.php>

Many general education issues are covered by Tennessee law. This law is the Tennessee Code Annotated or T.C.A. The education portion of the law is located in Title 49. The entire T.C.A. may be found online at the following address:

Tennessee Code Annotated

<http://198.187.128.12/>

Choose **Tennessee** from the drop-down list under **Legal Resources**

The Tennessee Department of Education/Division of Special Education has a web site that is full of information, forms, and resources. It may be accessed on the Internet at the address below:

**Tennessee Department of Education,
Division of Special Education
Web Site**

<http://www.state.tn.us/education/speced/index.htm>

For answers to all your special education questions or for help filling out Administrative Complaint forms, contact the Tennessee Department of Education/Division of Special Education at the telephone number, or address below:

**Tennessee Department of Education,
Division of Special Education**

**Andrew Johnson Tower
710 James Robertson Parkway
Nashville, Tennessee 37243**

**Toll Free 1-888-212-3162
or
Phone 615-741-2851 / Fax: 615-532-9412**

To: ATTN: Legal Services
Division of Special Education
Tennessee Department of Education
Andrew Johnson Tower
710 James Robertson Parkway
Nashville, Tennessee 37243-0380
FAX: 615.253.5567

Child's Disability

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ACFORM 01/02/01



Department of Education; February, 2004; Publication Authorization No. 331466; 25,014 copies. This public document was promulgated at a cost of \$0.2347 per copy.